Before The

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
	)	

To: The Commission

OPPOSITION TO MOTION FOR STAY

Paging Network, Inc. ("PageNet"), by its attorneys and pursuant to 47 C.F.R. § 1.43, hereby opposes the joint motion filed by GTE Service Corporation ("GTE") and Southern New England Telephone Company ("SNET")(collectively "Movants") on August 28, 1996, for a stay of the *First R&O*[1] issued in the above-captioned docket (the "Motion"). In support of this Opposition, the following is respectfully shown:

I. Introduction

The Movants have a clear economic interest in defeating any regulations that would create meaningful competition in their respective local monopolies. These interests cannot be the basis for a stay of the Commission's interconnection rules because virtually everyone, (including local exchange telephone

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[1] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report And Order*, CC Docket No. 96-98, FCC 96-325 (rel. Aug. 8, 1996) ("*First R&O*").

customers) but the LECs, will be harmed. Further, the Motion should not be granted because it is fatally overbroad in that is does not take into account the significant CMRS related provisions of the *First R&O*. As demonstrated below, the motion must not be granted because the Movants have failed to show that: (1) they are likely succeed on the merits; (2) irreparable injury absent a stay; (3) the absence of harm to others from granting a stay; and (4) that the public interest considerations favor a stay.[2]

II. Movants Are Not Likely To Prevail On The Merits

In the Motion, the Movants challenge the Commission's authority to adopt any pricing rules and more specifically the TELRIC-plus methodology. Under *Chevron U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837, 842 (1984) ("*Chevron*"), if an agency relies on the plain language of a statute, the agency may adopt any permissible construction of that language even though the language may be considered to be subject to more than one interpretation. In the *First R&O*, the Commission relied upon the plain language of the Telecommunications Act of 1996.[3] Because the Commission's interpretation and implementation of the 1996

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[2] *See Washington Metropolitan Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977).

[3] *Telecommunications Act of 1996*, Pub L. No. 104-104 ("1996 Act").

Act is based upon the plain language of the statute, and the statute clearly requires the Commission to ensure the rates are "just" and "reasonable." The Commission is entitled to deference by appellate courts. This means that the Movants are not likely to prevail on the merits because the Commission's implementation of the 1996 Act by the *First R&O* will be upheld under *Chevron*.

III. Movants Have Not Shown That They Would Suffer Irreparable Harm If The Motion Is Not Granted

Movants argue that the Commission's regulatory framework will result in irreparable harm by: (1) diminishing the bargaining power of incumbent LECs; and (2) by setting rates so low that the LECs are deprived of revenues, customers and goodwill.[4] These arguments do not establish irreparable harm and, as mandated by Congress, are at the center of what the Commission must achieve in its interconnection proceeding.

The LECs have a significant advantage in negotiating interconnection agreements. Unless their advantage is reduced by a considered nationwide regulatory framework, such as the rules established in the *First R&O*, the LECs will always have an undue advantage in negotiating interconnection agreements. It is the reduction of this advantage that will begin to level the playing field between the monopoly LECs and CMRS providers. The loss of

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[4] Motion at 25-35.

this advantage is not irreparable harm mandating stay of the Commission's interconnection rules.

The argument that the LECs will suffer irreparable harm because they will lose revenues, customers and goodwill is also unpersuasive. The 1996 Act requires the Commission create a regulatory framework that will open the local telephone market to competition, and reduce the LEC monopoly leverage in the negotiations of agreement between co-carriers, such as LECs and CMRS providers. If you are a monopoly, once competition enters your marketplace, you will lose customers simply by the fact that you are no longer the only game in town. In addition, because competitive pressures likely will reduce rates for communications services, competition may work to reduce the revenues of those companies that currently enjoy monopoly status. However, these are products of competition and do not constitute irreparable harm to the LECs.[5] Indeed, the consumer benefits of competitive pricing is one of the goals sought by Congress when it passed the 1996 Act.

IV. Grant Of The Motion Will Harm Others And Will Not Serve The Public Interest

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[5] The loss of revenues due to lawful competition does not constitute irreparable harm. *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 602-03 (1944).

Grant of the Motion will cause harm to others. The *First R&O* established a long overdue and farsighted framework in which wireless carriers are allowed to renegotiate the unreasonably high and unreasonably discriminatory LEC imposed interconnection rates. For wireless CMRS carriers, grant of the Motion would mean this framework would not be implemented in the near future. CMRS carriers would still have to pay the LECs excessive rates for interconnection, e.g., CMRS carriers will be required to pay the LECs for the LECs' use of facilities, and will not be compensated for LEC traffic originated terminated on the paging carrier's networks. The Commission has already found that the existing CMRS interconnection agreements are unreasonable and unfair to wireless carriers. Because a grant of a stay would perpetuate these patently unreasonable arrangements, the wireless industry would clearly be harmed by the grant of the Motion.

Further, staying the Commission's interconnection rules is the same as staying competitive entry into the local exchange marketplace. Without the Commission's regulatory framework, competitive carriers would enter the market on incumbent LECs' terms and the LECs will continue to exert their monopoly power to further delay true local competition in direct contradiction to Congress' intention. Simply put, unless the interconnection rules are in place, the LECs have no incentive to negotiate fair and reasonable terms, rates and conditions that will allow entry and lead to competition in the local exchange service

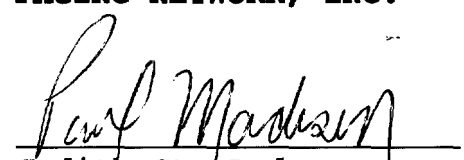
marketplace. Competitive carrier and local exchange customers would be clearly harmed by a grant of the Motion.

If wireless carriers are harmed, competitive carriers are unable to enter the local marketplace upon fair terms and conditions, and no real competition comes to the local exchange market, all carriers, except for the LECs are harmed --as are all local telephone customers. A stay to serve the narrow agenda of the Movants, which will also aid in the perpetuation of their local service monopolies, does not serve the public interest. The public interest is served by the implementation of the 1996 Act through the *First R&O*.

WHEREFORE, for the foregoing reasons, PageNet respectfully requests that the Commission deny the Motion.

Respectfully submitted,

PAGING NETWORK, INC.

By: 

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Date: September 4, 1996

CERTIFICATE OF SERVICE

I, Yvonne R. Warren, hereby certify that I have caused a copy of the foregoing "Opposition to Motion for Stay" to be served on this 4th day of September, 1996, by U.S. mail, first class postage, upon the following:

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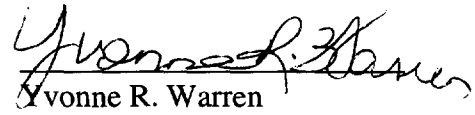

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